

## Federal Trade Commission

## § 241.17

is unsuitable for the purpose represented or implied in the offer;

(e) The failure, in the event of sale of the product offered, to deliver such product to the buyer within a reasonable time thereafter;

(f) The failure to have available a quantity of the advertised product at the advertised price sufficient to meet reasonably anticipated demands.

It is not necessary that each act or practice set forth above be present in order to establish that a particular offer does not comply with this section.

NOTE: 2. The Commission's Guides Against Bait Advertising furnish additional guidance respecting bait advertising. See 16 CFR part 238 for the Guides Against Bait Advertising.

[Guide 15]

### § 241.16 Guarantees, warranties, etc.

(a) An industry member should not represent in advertising or otherwise that a product is guaranteed without clear and conspicuous disclosure of:

(1) The nature and extent of the guarantee; and

(2) Any material conditions or limitations in the guarantee which are imposed by the guarantor; and

(3) The manner in which the guarantor will perform thereunder; and

(4) The identity of the guarantor. (The necessary disclosure requires that any guarantee made by the dealer or vendor which is not backed up by the manufacturer must make it clear that the guarantee is offered by the dealer or vendor only.)

(b) A seller or manufacturer should not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

(c) A specific example of refusal to perform obligations under the guarantee would arise in connection with the use of the phrase "Satisfaction or your money back" if the guarantor does not promptly make a full refund of the purchase price upon request, irrespective of the reason for such a request.

(d) This section has application not only to "guarantees" but also to "warranties," to purported "guarantees" and "warranties," and to any promise or representation in the nature of a "guarantee" or "warranty."

NOTE: The Commission's Guides Against Deceptive Advertising of Guarantees furnish additional guidance respecting guarantee representations. See 16 CFR part 239 for Guides Against Deceptive Advertising of Guarantees.

[Guide 16]

### § 241.17 Deceptive pricing.

An industry member should not represent directly or indirectly in advertising or otherwise that an industry product may be purchased for a specified price, or at a saving, or at a reduced price, when such is not the fact; or otherwise deceive purchasers or prospective purchasers with respect to the price of any product offered for sale; or furnish any means or instrumentality by which others engaged in the sale of industry products may make any such representation.

NOTE: The Commission's Guides Against Deceptive Pricing furnish additional guidance respecting price savings representations. See 16 CFR part 233 for the Guides Against Deceptive Pricing.

[Guide 17]

## PART 243—GUIDES FOR THE DECORATIVE WALL PANELING INDUSTRY

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AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

SOURCE: 36 FR 23796, Dec. 15, 1971, unless otherwise noted.

**§ 243.0 Definitions.**

For the purpose of this part the following definitions shall apply:

(a) *Industry member.* Any person, firm, corporation, or organization engaged in the manufacture, sale or distribution of industry products as such products are hereinafter defined.

(b) *Industry products.* Industry products include all products, whether of domestic or foreign origin, which are suitable for use as interior decorative wall panels. Industry products may be composed of any material or combinations of materials including, but not limited to, solid wood, plywood, wood products, plastics, metals, etc., and may be textured, prefinished, partially finished, or unfinished.

(c) *Exposed surface, front or face.* An “exposed surface” of a decorative wall panel is the one prominently exposed to view when the product is placed in the generally accepted position for use. The “exposed surface” is often referred to as the “front” or “face”, as contrasted to the back of a panel.

(d) *Back.* The back of a decorative wall panel is the surface reverse to the face. The back is not generally intended to provide an esthetically pleasing appearance and, therefore, is not considered an “exposed surface” under the definition immediately above. However, these definitions do not preclude unusual construction giving a panel two exposed surfaces or faces.

(e) *Veneer.* In this part, the term *veneer* is used in the sense most commonly understood by ordinary consumers—namely, to describe a thin layer of more valuable or beautiful wood used on the face of a panel for overlaying an inferior wood or other core material.

**§ 243.1 Avoiding deception generally.**

(a) *In general.* Industry members should not sell, offer for sale, or distribute industry products by any method, or under any representation, circumstance, or condition which has the capacity and tendency or effect of misleading purchasers or prospective purchasers as to the grade, type, kind, character, content, construction, composition, process, or technique used in preparation or fabrication, origin, size, thickness, quality, quantity, value, price, serviceability, resistance, per-

formance, durability, color, finish, manufacture, or distribution of any product of the industry or component part of such product, or in any other respect.

(b) *Basis for affirmative disclosures of facts.* (1) Many of the following sections set forth specific examples as to when affirmative disclosures should be made in advertising and on labels. In order to prevent deception the Commission may require affirmative disclosure of material facts concerning merchandise which, if known to prospective purchasers, would influence their decisions of whether or not to purchase. The failure to disclose such facts as may be required is an unfair trade practice violative of the Federal Trade Commission Act.

(2) Two of the most prevalent situations in which disclosures should be made are (i) when the appearance of a wall panel could mislead purchasers or potential purchasers as to its true composition, and (ii) when a representation is made in any manner which is susceptible of at least one misleading interpretation unless it is clearly qualified. Representations which cannot be qualified without the qualification amounting to a contradiction should not be used.

(c) *Manner of making disclosures on products and in advertising.* (1) Retail dealers, manufacturers, and other suppliers must all assume the affirmative responsibility to provide detailed information to the public concerning the compositions of wall panels through informative advertising, promotional materials, and properly labeled products and samples thereof.

(2) When disclosures are necessary on industry products, they should appear on each product (except when sold and used for industrial purposes and the industrial purchaser is otherwise fully informed of the material facts involved). Such disclosures should be on the product, or on a tag or label attached thereto, and be of such permanency as to remain on, or attached to, the product until consummation of sale to the ultimate purchaser. Conspicuous disclosures may appear on backs of wall panels, but in instances where such disclosures would not be readily noticeable to casual observers, such as

on certain point-of-sale display panels where the backs are not easily viewed, disclosures should be made on the front or face of panels.

(3) When disclosures are necessary in advertising, they should be made in any advertisement relating to an industry product irrespective of the form or media used whenever statements, representations or depictions appear therein which, in the absence of such disclosures, could serve to create a false impression that the product, or any part thereof, is of a certain kind, size, quality or composition.

(4) In all cases, disclosures should be in immediate conjunction with any representation, depiction, illustration, simulation, or display making it necessary, and should be of sufficient clarity and conspicuousness to be noted by prospective purchasers. The number of times a disclosure should be made will depend entirely upon the context in which it appears.

(5) When disclosures are necessary to describe composition, they may be accomplished by stating the true composition (e.g., "mahogany grained hardboard", "walnut grain finish on plastic", "reproduction of wood grain on plastic overlay" or "printed vinyl overlay on plywood"), or by making a disclaimer of composition (e.g., "imitation wood surface", "simulated wood finish" or "simulated grain design"). Of course, a representation concerning the composition of a product should clearly indicate the part to which the representation is properly applicable.

NOTE: For examples of when disclosures should be made, see the following sections.

[Guide 1]

#### §243.2 Describing wood and wood imitations.

In connection with the sale of industry products made of wood, or which are not wood but have an appearance simulating wood, industry members should not use any display, exhibit, sample, sales method, depiction or representation which could have the capacity and tendency directly or indirectly to mislead purchasers or potential purchasers because of: A false statement; a half-truth; or the failure to disclose facts concerning composi-

tion when the appearance of a product could convey a misleading impression.<sup>1</sup>

(a) Examples of representations considered false include:

(1) Describing an oak panel as "pecan";

(2) Describing as "solid birch" or "genuine birch" a panel made with laminations of all birch plies. Proper descriptions would include "birch plywood" or "birch plies";

(3) Describing a particleboard, flakeboard, hardwood, fiberboard, chipcore or plywood panel as "solid wood";

(4) Describing as "natural wood grain" a simulated grain design which has been printed on, attached to or simulated in any other manner on the surface of an industry product;

(5) Describing a nonlumber product, such as particleboard, hardboard, fiberboard, flakeboard, and products of similar composition, as "wood". Although such products are composed of wood particles or wood fibers, they should not be represented without qualification as "wood" but may be described as "particleboard", "hardboard", "fiberboard", "wood product", or by any applicable nondeceptive word or term.

(b) Examples of representations considered likely to mislead because of a half-truth include:

(1) Describing as "walnut", "in walnut", "genuine walnut", "walnut panel" or "walnut plywood" a panel having only a face veneer of walnut. Proper descriptions would include "walnut veneer face", "walnut veneer surface", "walnut veneer" or "walnut veneered plywood".

NOTE: Unqualified terms such as "walnut", "genuine walnut" and "in walnut" imply that the product so described is solid walnut. Unqualified terms such as "walnut plywood" imply that all of the plies are walnut.

(2) Describing as "walnut veneer" a panel having a face veneer not entirely of walnut. If a wood name is used to describe a panel having more than one kind of wood in the face veneer then all of the woods in the face veneers should be named or otherwise identified (e.g., "walnut and cherry veneers" or "walnut and other hardwood veneers");

<sup>1</sup>See paragraphs (b) and (c) of §243.1.

(3) Using unqualified phrases such as “wood-pattern” or “woodgrain finish” to describe a panel having a wood surface which has been stamped, rolled, pressed, or otherwise processed in such manner as to change the natural wood grain design. Proper descriptions would include “simulated woodgrain finish”, “imitation grain figure” or “simulated walnut grain finish on birch face veneer”;

(4) Describing as “hardwood plywood” a panel made of hardwood plywood but having a vinyl film surface simulating a wood finish. Proper descriptions would include “hardwood plywood with simulated wood grain on vinyl overlay” or “simulated wood surface on plywood”.

(c) Examples of failure to disclose facts concerning composition when the appearance of industry products could convey a misleading impression include circumstances such as when a product, or part thereof, is: Wood but has the appearance of a different kind of wood; and Not wood but has an appearance simulating wood. For instance, when necessary to prevent possible deception an affirmative disclosure should be made of the facts concerning composition when an industry product, or part thereof:

(1) Has an exposed surface of plastic, metal, vinyl, hardboard, particle-board or other material not possessing a natural wood grain structure but which has an appearance simulating that of a wood grain. Depending on the composition, proper descriptions would include “simulated walnut finish on plastic face”, “vinyl surface with simulated pecan finish”, “simulated birch finish on hardboard” “mahogany grained plastic”, or other nondeceptive phrases;

(2) Has a wood surface finished by means of staining, decalcomania, printing, paper coating or other process so as to have the appearance of a different kind of wood. Depending on the composition, proper descriptions would include “mahogany finished gum plywood”, “walnut stained plywood”, “walnut finish on pecan veneer face”, or “cherry grain design on hardwood plywood”;

(3) Has an appearance which could mislead potential purchasers in any material respect.

(d) Examples of wood names to describe color, grain design, etc.:

(1) When a wood name is used in advertising or labeling to describe the grain and/or color of a stain finish or other type of simulated finish which has been applied to a surface composed of something other than solid wood of the type named, it should be made clear that the wood name used is merely descriptive of the grain design and/or color or other simulated finish.

(2) Under this section, unqualified phrases such as “walnut”, “walnut finish”, “in walnut”, “fruitwood”, “oak”, “mahogany finish”, and other terms of similar import or meaning, will not be adequate. But statements such as “walnut stain”, “maple stain finish”, “mahogany finish on gum”, “photographically reproduced pecan grain”, “printed pecan design”, “fruitwood finish on selected hardwood veneer”, “cherry grain finish on vinyl overlay” and “walnut finish on other hardwoods” (or “softwoods”, as the case may be) will satisfy this provision if such statements are factually correct and appear in contexts which are otherwise nondeceptive.<sup>2</sup> [Guide 2]

#### § 243.3 Deceptive use of wood names.

Industry members should not use any direct or indirect representation concerning the identity of the wood in industry products that is false or likely to mislead purchasers as to the actual wood composition.

(a) *Walnut*. The unqualified term *walnut* should not be used to describe wood other than genuine solid walnut (genus *Juglans*). The term *black walnut* should be applied only to the species *Juglans nigra*.

(b) *Mahogany*. (1) The unqualified term *mahogany* should not be used to describe wood other than genuine solid mahogany (genus *Swietenia* of the *Meliaceae* family). The woods of genus *Swietenia* may be described by the term “mahogany” with or without a prefix designating the country or region of its origin, such as “Honduras mahogany”. “Costa Rican mahogany”.

<sup>2</sup>See paragraphs (b) and (c) of § 243.1.

"Brazilian mahogany" or "Mexican mahogany".

(2) The term "mahogany" may be used to describe solid wood of the genus *Khaya* of the Meliaceae family, but only when prefixed by the word "African" (e.g., "African mahogany").

(3) In naming or designating the seven nonmahogany Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis, and Bagtikan, the term "mahogany" may be used but only when prefixed by the word "Philippine" (e.g., "Philippine mahogany"), due to the long standing usage of that term. Examples of improper use of the term "mahogany" include reference to Red Lauan as "Lauan mahogany" or to White Lauan as "Blond Lauan mahogany". Such woods, however, may be described as "Red Lauan" or "Lauan" or "White Lauan", respectively. The term "Philippine mahogany" will be accepted as a name or designation of the seven woods named above. Such term shall not be applied to any other wood, whether or not grown on the Philippine Islands.

(4) The term "mahogany", with or without qualifications, should not be used to describe any other wood except as provided above. This applies also to any of the woods belonging to the Meliaceae family, other than genera *Swietenia* and *Khaya*.

(c) *Maple*. The terms *hard maple*, *rock maple*, *bird's-eye maple*, *Northern maple* or other terms of similar nature should not be used to describe woods other than those known under the lumber trade names of Black Maple (*Acer nigrum*) and Sugar Maple (*Acer saccharum*).

NOTE: Nothing in this section should be construed as prohibiting the nondeceptive use of wood names to describe the color, stain, simulated finish, or appearance of industry products; *Provided*, That appropriate qualifications are made in accordance with provisions in §243.2(d).

[Guide 3]

#### §243.4 Imitations of materials other than wood.

Industry members should not misrepresent the composition of any industry product, or part thereof, or fail to disclose any material fact concerning the composition of an industry

product when the failure to do so has the capacity and tendency or effect of deceiving purchasers or prospective purchasers.<sup>3</sup> For example:

(a) A hardboard panel having an imitation marble finish should not be described without qualification as "marble", "onyx", "travertine" or "travertine marble finish". Proper descriptions would include "simulated marble finish", "imitation marble-textured", "marble pattern on plastic faced hardboard", "simulated travertine on hardboard", "marble pattern on vinylfaced hardboard" or other nondeceptive terms;

(b) A fiberboard panel having an imitation burlap finish should not be described without qualifications as "burlap" or "burlap finish". Proper descriptions would include "imitation burlap weave finish", "simulated burlap design on fiberboard", "simulated burlap finish on fiberboard", "burlap pattern on embossed vinyl surface" or other nondeceptive terms. [Guide 4]

#### §243.5 Misleading illustrations.

Industry members should not use any picture, illustration, diagram or other depiction, either alone or in conjunction with words or phrases, which would have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning any material fact relating to an industry product. For example, if an advertisement showed installed panels with the color and graining characteristic of walnut, but the paneling being offered was not genuine solid walnut, then the advertisement should contain a clear and conspicuous disclosure of the composition of the product being offered (e.g., "walnut veneer plywood", "engraved walnut grain design on selected hardwood plywood", or "simulated walnut finish on hardboard").<sup>3</sup> [Guide 5]

#### §243.6 Deceptive use of trade or corporate names, coined names, trademarks, etc.

Industry members should not use any trade name, product name, corporate name, coined name, trademark or other trade designation, which has the

<sup>3</sup>See paragraphs (b) and (c) of §243.1.

capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the character, name, nature, composition, or origin of any industry product, or of any material used therein, or which is false or misleading in any other material respect. [Guide 6]

**§ 243.7 Passing off through imitation or simulation of trademarks, trade names, etc.**

Industry members should not pass off the products of one industry member as and for those of another through the imitation or simulation of trademarks, trade names, brands, labels or otherwise. [Guide 7]

**§ 243.8 Disclosure of “seconds”, “rejected” or “defective” products, etc.**

Industry products which are not of first quality should be legibly marked or labeled in a clear and conspicuous manner as “second”, “rejected”, “defective”, or “blemished”, as the case may be, or by some other term which clearly and conspicuously makes known to purchasers, or potential purchasers viewing the products, the fact that they are not of first quality. Also, such products should not be advertised in any manner without a clear and conspicuous disclosure that the products are not of first quality. Such disclosures should conform with provisions of paragraphs (b) and (c) of § 243.1 of this part. [Guide 8]

**§ 243.9 Representations concerning washability, cleanability, etc.**

Industry members should not directly or indirectly misrepresent the manner in which the exposed surfaces of prefinished industry products may be washed, cleaned, or otherwise maintained, or fail to clearly and conspicuously disclose the manner in which exposed surfaces may be washed, cleaned, or otherwise maintained without adverse effects whenever representations are made concerning such matters. [Guide 9]

**§ 243.10 Size markings and designations.<sup>4</sup>**

Industry members should not:

(a) Mark or otherwise represent, directly or by implication, an industry product as being of a certain size unless it has the dimensions represented; or

(b) Fail to disclose in advertising and on industry products the true size thereof when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the size of such products. For example, consumers generally assume that decorative wall panels are 4'x8'x1/4" when advertised without disclosure of dimensions. Therefore, if the dimensions of advertised panels are less than 4'x8'x1/4", an affirmative disclosure of the correct size should be made.<sup>5</sup> [Guide 10]

**§ 243.11 Removal, obliteration, or alteration of marks or labels.**

Industry members should not:

(a) Remove, obliterate, deface, change, alter, conceal, or make illegible any information this part provides be disclosed on industry products, without replacing the same before sale, resale or distribution for sale with a proper mark or label meeting the provisions of this part; or

(b) Sell, resell, or distribute any industry product without its being marked or labeled and described in accordance with the provisions of this part. [Guide 11]

**§ 243.12 Misrepresenting products as conforming to standard or specification.**

Members of the industry should not misrepresent in advertising, labeling,

<sup>4</sup>Officially established Commercial Standards and Product Standards concerning the various industry products are recognized as giving proper guidance for determining dimensions of industry products (e.g., CS157-56; CS176-58; CS35-61; CS251-63; CS236-66; and PS1-66; and amendments or revisions thereof).

<sup>5</sup>See paragraphs (b) and (c) of § 243.1.

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or otherwise, that any product conforms to any applicable standard or specification. [Guide 12]

### § 243.13 Deception as to origin.

(a) Industry members should not make any direct or indirect representation which is false or likely to mislead prospective purchasers concerning the origin of either domestic or foreign industry products, or any substantial parts thereof.

(b) Industry members should clearly and conspicuously disclose that industry products, or any substantial parts thereof, were produced or manufactured in an identified foreign country when the failure to make such disclosure has the capacity and tendency or effect of deceiving prospective purchasers. Such disclosures should be in the form of a legible mark, stamp or label on the product, and any samples thereof, and should be of such size, conspicuousness and permanency as to remain noticeable and legible upon casual inspection until consumer purchase. [Guide 13]

### § 243.14 Other parts in this title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, part 233, Guides Against Deceptive Advertising of Guarantees, part 239, and Guides Against Bait Advertising, part 238, all of which have general application and furnish additional guidance for members of the Decorative Wall Paneling Industry. Members of this industry should comply with those parts.

## PART 245—GUIDES FOR THE WATCH INDUSTRY

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### APPENDIX TO PART 245

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 33 FR 10332, July 19, 1968, unless otherwise noted.

### § 245.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) The term *watch* means a time-piece or time-keeping device for measuring or indicating time which is designed to be worn on or about the person.

(b) The term *watchcase* or *case* means any metal case, covering, or housing of any quality or description for a watch as defined above and shall include the back, center, lugs, bezel, pendant, crown, bow, cap, and other parts thereof, including a watch band which has been permanently affixed thereto; and unless otherwise stated, either term as used in this part applies to the case whether marketed separately or together with the movement or works.

(c) The term *accessories* means products, other than watch bands, which are affixed to and sold in combination with watchcases or watches, such as, for example, bracelets, pins, pendants, brooches, or ornaments. (NOTE: Metallic watch bands of the detachable type are subject to the provisions of the Trade Practice Rules for the Metallic Watch Band Industry, promulgated June 30, 1962, and amended June 16, 1964.)

(d) The term *mark* means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof,